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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

COMPANY PETITION NO. 898 OF 1999

J. Ben & Co. ...Petitioners.

Vs.

M/s.Vintage Pharmaceuticals Ltd. ...Respondents.

Ms. Sanaya Dadichanji i/by M/s. M.K. Ambalal and Co. for the petitioner.

CORAM : ANOOP V. MOHTA,J.

DATED : 31st August, 2007

ORAL JUDGMENT:-

1. The petitioners have invoked provisions of Sections 433 and 434 of the Companies Act, 1956. As the respondent Company though served with a statutory demand notice of Rs.26,90,676/-, failed to pay the said amount mainly on the ground as the petitioners at the relevant time initiated the proceedings against M/s. Vitara Chemicals Ltd.. The matter was subjudice. The demand was based on the transaction i.e. five bills of exchange as drawn by the petitioners on M/s. Vitara Chemicals Ltd. which were towards the costs of goods and material supplied by the petitioners to the respondent company. Those bills were duly accepted by the said company. The said bills were discounted and the petitioners became

the owner in due course in respect of the same. As the cheques were dishonoured, the petitioners have already filed petition under Section 138 of the Negotiable Instruments Act and the same is still pending. As the company has accepted their liability to make the payment and therefore inspite of the repeated reminders they failed to make the payment of the said bills on respective dates, the petitioners, therefore, made various demands and lastly by the statutory notice.

2. The learned counsel appearing for the petitioners further submitted that M/s. Vitara Chemicals Ltd. has already been wound up by this court, recently.

3. As admittedly, the petitioners have not received any payment from either of the companies, though there is no dispute about the same except the defence of shifting of liability.

4. In view of this, the defence as raised by the respondent company in affidavit dated 8th October, 1999 by raising above contention that itself is not sufficient to overlook the positive averments as made by the petitioners which in so far as the liability is

concerned, remained uncontroverted. Both the drawer and the drawee even otherwise, under the provisions of the Negotiable Instruments Act are liable. In the present facts and circumstances of the case, merely because the respondent company has filed the unsupportive affidavit in response to the petitioners claim that itself is no reason to discard the case of the petitioner. The defence as raised and recorded about by the respondent company, is unacceptable. The amount due and payable remained unpaid till this date.

5. As noted, none appeared for the respondent company. Affidavit of publication dated 27th June, 2007 is part of the record.

6. Taking all this into account the petition is allowed in terms of prayer clause (a) and (b).

(ANOOP V. MOHTA, J.)